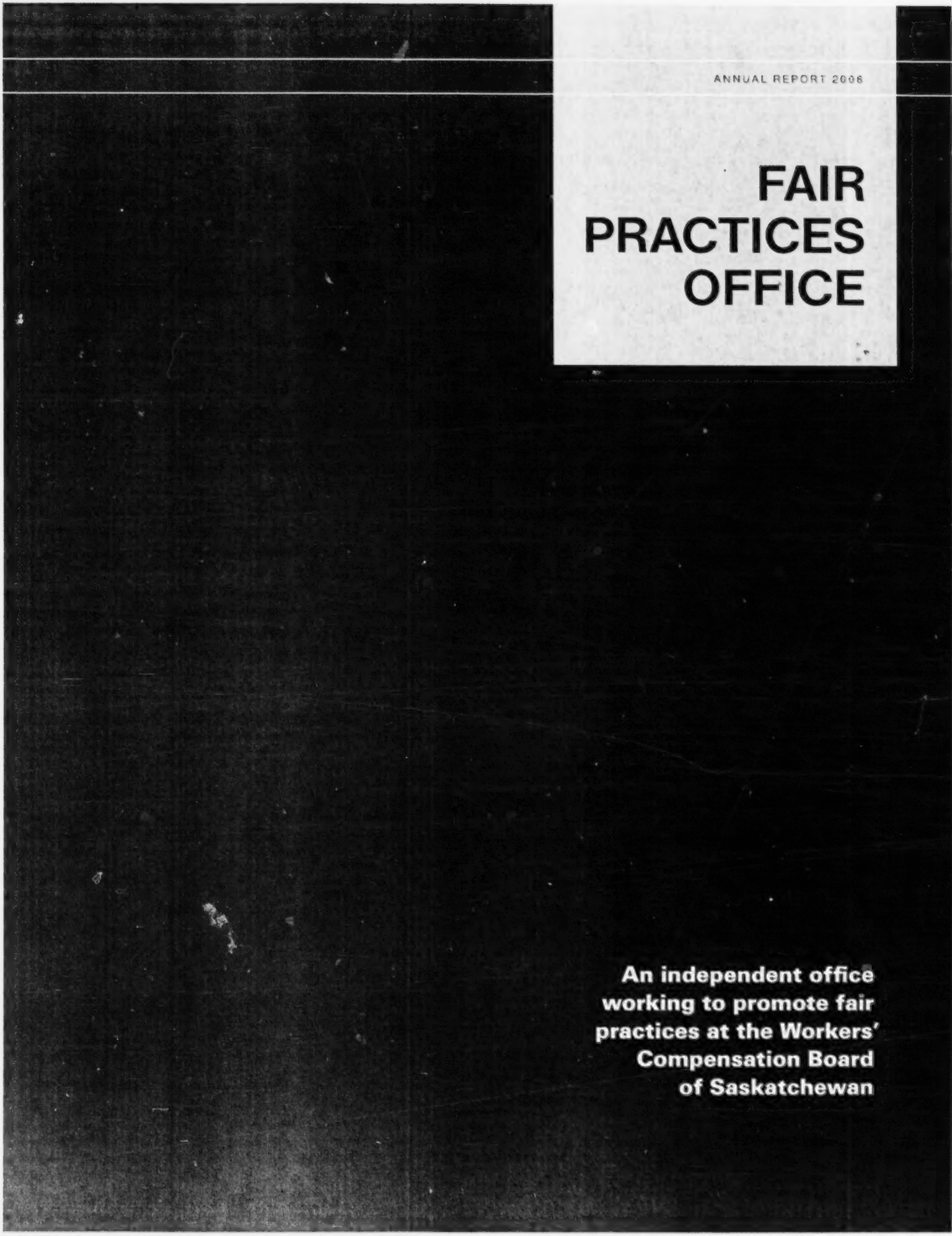
ANNUAL REPORT 2006

FAIR PRACTICES OFFICE



An independent office working to promote fair practices at the Workers' Compensation Board of Saskatchewan

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MESSAGE FROM THE FAIR PRACTICES OFFICER

It is my pleasure to present the Fair Practices Office Annual Report for the year ending December 31, 2008.

I was privileged to be the first person appointed to the position of Fair Practices Officer in September, 2003. The Fair Practices Office opened its doors and phone lines to injured workers and employers in January of 2004. The 2008 report marks the completion of five full years of service by the Fair Practices Office.

The role of the Fair Practices Office is to receive complaints and inquiries from injured workers, employers and service providers. Our first objective is to listen to the concerns that are brought forward and secondly, to seek a resolution to any problems that are identified. The Office operates like a corporate ombudsman and possesses only the power to make recommendations. The power of a recommendation, however, should not be underestimated. The Fair Practices Office, like most ombudsman offices, continues to have a very high acceptance rate for our recommendations.

The year 2008 was the busiest year on record for the Office with 434 new concerns and inquiries received, involving 625 issues. I believe the increase reflects the fact the Office is becoming better known to both employers and injured workers throughout the province.

Clients, staff of the Workers' Compensation Board and friends often question the wisdom of working in an office driven by complaints. I am pleased to report that most days are very rewarding and thank-yous are received frequently. It is indeed a privilege to serve the injured workers and employers of this province as the Fair Practices Officer.

I am also grateful to the staff of the Workers' Compensation Board for listening attentively to my recommendations and for promptly addressing the vast majority of them. Their cooperation is sincerely appreciated.

Finally, I must express my gratitude to the Intake and Inquiry Officer who patiently receives all initial inquiries to the Office and successfully resolves many of them.

Murray Knoll
Fair Practices Officer

OVERVIEW

Establishment of the Office

The Fair Practices Office (FPO) was initially recommended by the James Dorsey Review (2000). Dorsey envisioned "the establishment of a Fair Practices Office that will assist our clients with disputes and complaints by steering them through the process to the right place. In addition, the Fair Practices Office will investigate complaints and tabulate statistics that can point to the need for process and or policy changes".

The Saskatchewan Workers' Compensation Act Committee of Review 2001 Report in referencing fairness cited Section 21.1(1) of *The Workers' Compensation Act, 1979* and its requirement that: "The Board shall: (a) treat workers and their dependents in a fair and reasonable manner." The Report also referenced and supported the recommendation of the James Dorsey Review of 2000 to establish the FPO.

In September, 2003, the FPO was officially established with the appointment of the first Fair Practices Officer.

Mandate and Role

The initial mandate statement provided by the WCB Board Members required the FPO to maintain a moral duty of impartiality and to advocate for fairness of procedure and practice, as opposed to acting as an individual's advocate or representative. The FPO was to operate and to be seen to operate as sufficiently removed and independent from day-to-day operations.

The mandate provided the Fair Practices Officer with authority to investigate in all areas of the administration of the WCB, including, but not limited to:

- Delays in adjudication, communication, referrals and payment
- Conduct of staff
- Verbal and written communication
- Implementation of appeal findings
- Revenue and Employer accounts
- Administrative payments
- Misapplication of policy

Authority

In conducting an investigation, the FPO has unfettered access to all files, documents and other materials in the possession of the WCB relating to the matter under investigation, and unfettered access to all WCB employees.

The Fair Practices Officer has the authority to make recommendations. The FPO does not possess the authority to make binding decisions. This is typical of most ombudsman offices and does not reduce the effectiveness of the Office.

Reporting

In the spirit of operating and being seen to operate at arm's length from the WCB's administration, the Fair Practices Officer reports directly to the WCB Board Members through the Chairperson. Meetings with the Board Members are held on a monthly basis.

The budget for the FPO is approved by the WCB Board Members.

The FPO reports to stakeholders through the publication of this annual report.

Process

The majority of contacts with the FPO are made by phone. The Intake and Inquiry Officer listens to the initial concerns and determines what action is required. If the inquiry relates to general policy of the WCB or the status of a specific payment, the response may be straightforward and almost immediate.

If the inquiry concerns a specific claim and the matter has not previously been raised with the WCB staff responsible, the individual will be advised to approach the WCB staff member with their concerns.

In situations where the individual believes they have been treated unfairly, or believes the WCB has not properly applied a particular policy or section of its legislation, a full review of the file may be required. This indepth review is typically conducted by the Fair Practices Officer and will take more time to complete.

If the Fair Practices Officer is of the view the WCB has acted fairly and in accordance with WCB policy and legislation, this will be explained to the individual. The Fair Practices Officer will usually make reference to the specific policy or legislation that applies and provide copies if required. Alternate remedies, including the option of filing an appeal, will be discussed.

In cases where the investigation reveals a problem in terms of fairness or the application of WCB policy or legislation, the Fair Practices Officer will attempt to obtain a solution to the problem. Initially, a recommendation for review and corrective action is made to the first level manager. If a satisfactory response is not received and the issue remains unresolved, the Fair Practices Officer may then move the issue forward to the responsible Director or Vice President. Unresolved issues can be taken to the WCB's Chief Executive Officer or the Board Members themselves, but situations of this nature are rare.

COMMITTEE OF REVIEW 2006 REPORT

The Saskatchewan Workers' Compensation Act Committee of Review 2006 Report made one formal recommendation with respect to the FPO: "The Fair Practices Office formally adopt, adhere to and advertise its adherence to the International Ombudsman Association code of ethics and standards of practice."

The Fair Practices Officer is now an Associate member of the International Ombudsman Association (IOA) and has adopted the code of ethics of the IOA.

The standards of practice for the IOA do not permit members to conduct investigations or to keep formal records. The mandate for the FPO, however, requires that investigations be conducted and records kept in order to identify systemic issues. Following discussion with the WCB Board Members, it was agreed that it would be more appropriate for the FPO to develop its own standards of practice. An initial draft has been completed and is now pending final approval by the WCB Board Members.

In its 2006 report, the Committee of Review commended the Board for establishing and supporting its FPO, but concluded it was too early in the life and experience of the Office to fully assess and evaluate its contribution. The Committee concluded the Office should continue and be supported by the Board with a clear mandate, evolving authority and security of tenure in appointment.

A formal WCB Board policy establishing the FPO and its authority is under review by the WCB Board Members. The policy is intended to provide clarity concerning the mandate and authority of the Office and to address the issue of security of tenure in the appointment of the Fair Practices Officer.

Code of Ethics

The Fair Practices Officer is a member of the International Ombudsman Association (IOA) and adheres to the IOA code of ethics, including the following ethical principles:

Independence – The Ombudsman is independent in structure, function and appearance to the highest degree possible within the organization.

Neutrality and Impartiality – The Ombudsman, as a designated neutral, remains unaligned and impartial. The Ombudsman does not engage in any situation which could create a conflict of interest.

Confidentiality – The Ombudsman holds all communication with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

Informality – The Ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his / her attention.

2008 – ACTIVITIES DURING THE YEAR

- Participated in orientation sessions for Members of the Legislative Assembly and their constituency assistants in Regina and Saskatoon
- Participated in the WCB's Compensation Institute in Regina
- Hosted meeting with Client Service Officer for Newfoundland Workplace, Health, Safety and Compensation Commission
- Attended Annual Conference of International Ombudsman Association
- Attended Annual General Meeting for Saskatchewan WCB in Regina and Saskatoon
- Attended regional meeting of the Northwest Ombudsman Group
- Participated in quarterly teleconference meetings with Fairness Working Group (counterparts in other WCBs in British Columbia, Manitoba, Ontario, Newfoundland and Nova Scotia)

COMPARATIVE STATISTICS

for the calendar years 2004 through 2008

Number of Complaints / Inquiries Received

	2008	2007	2006	2005	2004
Complaints received	**434**	401	365	384	397
Re-opened	**39**	43	28	41	20
Total	**473**	444	393	425	417

Source of Complaints / Inquiries

	2008	2007	2006	2005	2004
Injured Workers	**83.6%**	90.1%	91.0%	94.5%	87.2%
Employers	**10.4**	6.2	8.0	3.0	9.8
Other	**6.0**	3.7	1.0	1.6	3.0
Total	**100.0**	100.0	100.0	100.0	100.0

Category of Complaints / Inquiries

	2008*	2007	2006	2005	2004
Disagree with decision	**332**	212	178	214	232
Timeliness & process delays	**76**	55	66	76	67
Communications/Service issues	**96**	56	40	31	47
Information requests	**120**	73	74	58	47
FPO issues (systemic)	**1**	2	3	3	4
Other	**0**	3	4	2	0
Total	**625**	401	365	384	397

* Beginning in 2008, two or more categories can be entered for each complaint that is registered. In prior years, only one category per complaint was entered.

Resolution (closed files)

	2008	2007	2006	2005	2004
Completed by FPO without referral	**263**	248	204	233	205
Called WCB for clarification	**38**	31	26	38	51
Referred to WCB	**133**	122	135	113	141
Total	**434**	401	365	384	397

Outcome of Referrals to WCB

	2008	2007	2006	2005	2004
Decision changed	**18**	13	17	15	23
New action taken	**112**	101	105	90	89
Reviewed – no change	**3**	8	13	8	29
Total	**133**	122	135	113	141

Response Time (closed files)

	2008	2007	2006	2005	2004
0-7 days	**75.1%**	69.6%	63.5%	70.6%	62.0%
8-30 days	**18.9**	20.9	20.7	18.9	19.6
Over 30 days	**6.0**	9.5	15.8	10.5	18.4
Total	**100.0**	100.0	100.0	100.0	100.0

CASE SUMMARIES

The following case summaries are provided as examples of work completed by the Fair Practices Office. Names are not provided to protect the privacy of the individuals who brought these issues forward.

CASE SUMMARY 1 – Travel expense coverage too low

An injured worker called the FPO to complain the WCB was not providing the full costs of his hotel expenses while he was attending tertiary treatment in Saskatoon. The worker noted the WCB had been paying full hotel costs when treatment started, but given the housing shortage in Saskatoon, most hotels had raised their rates, and the WCB was refusing to pay the increased rates.

Initial review of this file confirmed the WCB was only prepared to pay the maximum rates approved by the Public Service Commission, and these rates had not been updated to reflect recent increases. The FPO located a recently approved WCB policy that did allow the WCB to pay the actual hotel expenses. The new policy was brought to the attention of the Team Leader, who subsequently agreed to reimburse the full costs of the hotel expenses while this worker was attending treatment in Saskatoon.

A short time later, the Office received a similar inquiry from another worker in rural Saskatchewan. This worker was also not receiving full reimbursement for his hotel costs. He had been referred to the FPO by another FPO client. The second worker's file was handled by a different team. Upon review of this second claim, the FPO approached the Team Leader to bring the new travel expense policy to his attention. The Team Leader agreed that the new policy did allow for payment of the full cost of the hotel expenses and an adjustment was promptly issued.

These complaints were received early in 2008 with no similar complaints being received for the balance of the calendar year.

CASE SUMMARY 2 – Cooperative effort assists widow

It is not unusual for an injured worker to have more than one injury claim, or for the claims to be in different provinces. This was the situation with one of the first clients of the FPO.

This elderly worker had long term claims in both Saskatchewan and Manitoba. Over the years, he had many questions about his benefits and was in frequent contact with the FPO and the Fair Practices Advocate in Manitoba. Each province has its own legislation and the differing benefits often confused this worker. The worker had frequently expressed his appreciation to the FPO for the advice and explanations the FPO was able to provide to him.

Sadly, the FPO received a referral from the Fair Practices Advocate in Manitoba on behalf of this man's widow. The man had passed away, and his widow was inquiring whether she had any entitlement from the WCB in Saskatchewan. Initially, the WCB response was that she did not have entitlement in Saskatchewan as his death was

not related to his work injury. Upon review of this file, the FPO noted the man had been in receipt of long term benefits and *The Workers' Compensation Act, 1979* does allow for limited benefits to a widow in this situation. This section of the legislation was brought to the attention of the staff responsible for this case. The decision was subsequently reversed and the widow was found to be eligible for benefits for a period of 12 months.

CASE SUMMARY 3 – Too much stress!

The FPO received a call from a worker who had filed a claim for a stress injury. She felt it was taking too long for the WCB to decide whether or not to accept her claim. Initial review of this claim confirmed the WCB staff responsible for this file was actively pursuing this claim and was attempting to obtain medical reports concerning the worker's injury and past medical history. The worker had been informed about WCB policy on acceptance of stress claims. The worker's report of injury and the employer's report were both on file. Given the ongoing efforts to develop this file no recommendation was required by the FPO.

A few days later, medical reports from the worker's physician were provided. Following review of this information, a decision was taken to deny the claim. The worker was informed verbally and a letter was sent to her, explaining why her claim was not being accepted as a work injury.

The initial question of a delay in reaching a decision had been addressed. However, upon review of the letter to this worker, the FPO was concerned about the reasons provided to the worker and how the stress policy had been applied to the particular circumstances of this claim. The FPO approached the Team Leader and asked for a review of the application of the WCB stress policy to this case. The Team Leader agreed that the WCB stress policy had not been properly applied and confirmed the claim would be accepted. It was noted the staff involved with this case was relatively new to the position.

CASE SUMMARY 4 – The right to be heard

One of the critical elements in a fair process is the right to present one's case and have it heard fairly. If this opportunity is denied, an employer or injured worker will have difficulty accepting that the process or decision is fair.

An employer approached the FPO because he believed he had been denied his right to be heard. He had been promised an opportunity to present evidence at a worker's appeal before the WCB Board Members, but a decision was made without his evidence.

Review of this file confirmed that an injured worker had appealed the suspension of his benefits, and the appeal was denied by the Appeals Department. The worker submitted an appeal to the WCB Board Members through the Office of the Worker's Advocate. The employer was advised of the worker's appeal and the opportunity to provide written representation to the WCB Board Members. The employer requested a private meeting with the WCB Board Members, or an opportunity to participate in the hearing with the worker and the worker's advocate.

The case became complicated when a new advocate was appointed by the Office of the Worker's Advocate and provided a detailed written submission to the WCB Board Members. The appeal hearing was then delayed as the worker could not be located. Eventually, it was confirmed the worker had relocated and the advocate advised the WCB Board Members to proceed with the appeal. The WCB Board Members made a decision based upon the documentation on file, including the submission by the Office of the Worker's Advocate. No hearing was held with either the injured worker or the employer. The decision was to partially accept the worker's appeal.

Upon inquiry by the FPO, WCB staff indicated they did not believe the worker was still requesting a meeting after the written submission was provided by the second advocate. As no meeting was held, the employer was not invited to attend and a decision was made without his input. WCB staff understood why the employer would be unhappy, but because the WCB Board Members had already made a decision, they felt the only remedy would be for the employer to file his own appeal with respect to the decision.

The employer did file an appeal on this decision. He was provided a hearing with the WCB Board Members and was granted cost relief for the additional benefits that had been awarded to this worker. Fairness was restored to the process and the employer was satisfied with the outcome.

CASE SUMMARY 5 – Am I in the right rate code?

An employer representative contacted the FPO. The representative said an employer had recently reviewed her WCB rate code and questioned whether she was in the right one. The employer had purchased the business several years ago and it continued to be listed under a rate code for services that she no longer provided. She did not want to contact the WCB directly for fear she would be accused of previously misrepresenting her business to the WCB. The FPO referred the inquiry to Revenue and Employer Accounts (REA) for further review.

After review by an REA supervisor, a WCB staff member contacted the employer to confirm the nature and details of the business. Based on this new information, REA agreed to do a classification change for this employer before the 2008 assessments were sent out.

CASE SUMMARY 6 – Maximum wage rate

Most workers are not aware that there is a maximum WCB wage rate in effect until they experience a work injury and begin receiving wage loss benefits that are lower than expected. Section 38.1 of *The Workers' Compensation Act, 1979* provides for a maximum wage rate for workers injured on or after September 1, 1985. Section 38.1(d) establishes the maximum wage rate applicable on and after January 1, 2005 is $55,000 per year.

Given the recent economic boom in several industry sectors, many workers are earning an income in excess of $55,000 per year. The FPO receives this complaint with some regularity. Because the maximum wage rate is established by legislation, the WCB may not adjust the rate without an amendment to its legislation.

The FPO is able to confirm current legislation and policy are being followed by the WCB. The Office is unable to recommend any changes to the legislation as this is a matter for the elected Members of the Legislative Assembly.

CASE SUMMARY 7 – Communication restrictions

In a relatively small number of cases, the WCB has found it necessary to restrict the manner in which an injured worker or employer is able to communicate with staff of the WCB. Typically, this occurs where a person has been verbally abusive or otherwise threatening in communication with a staff member of the WCB. In these situations, the person may be restricted to communicating only in written form with the WCB.

Several of the people who are restricted in their communications with WCB have approached the FPO for assistance in addressing specific issues. The FPO has continued to accept telephone inquiries from these individuals and has successfully responded to these inquiries. The FPO can provide information on the status of the file or a specific payment; explain legislation and policy and direct individuals to the appeal process where appropriate. The FPO cannot become an advocate on behalf of the person with the restriction, but a referral can be made to the Office of the Worker's Advocate.

The role of facilitating communication between the WCB staff and a person with a communication restriction can be a challenging one, but it can also be productive. Claims issues and vocational plans still need to be attended to, even where communication restrictions are in effect. The FPO will continue to work with this group of people to assist in the administration of their claims. The FPO insists upon respectful communication with its clients and it usually receives the same respect in return.

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